

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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MEMORANDUM TO: Planning Directors and Other Interested Parties

FROM: Cathy Creswell, Program Manager
Housing Policy Development Division

SUBJECT: **Model Density Bonus Ordinance**

State density bonus law (Government Code Section 65915) was created to offer a land use-based option to facilitate the economic feasibility of affordable housing development. Section 65915, as amended by Chapter 842, Statutes of 1989, required all cities and counties to adopt density bonus ordinances. The law provides that local governments shall grant density bonuses of at least 25 percent, plus an additional incentive(s) or equivalent financial incentives, to housing developers who agree to construct at least: 20% of the units affordable to lower-income households, 10% of the units affordable to very low-income households, or senior citizen housing.

The Department of Housing and Community Development (the Department) released a technical assistance paper in March of 1990 to assist local governments in complying with State density bonus requirements. The Department has prepared the enclosed model density bonus ordinance to further facilitate local government efforts to adopt and implement density bonus ordinances.

The model ordinance was designed by the Department to serve as a basic outline for local ordinances, and can be tailored to the particular needs of each community. The technical appendix to the model ordinance notes some variable points for local considerations, and is for use in drafting the ordinance only. We recommend that the specific provisions of the local ordinance be developed in consultation with other relevant staff, officials, housing developers, and other interested entities, including local legal counsel. Your jurisdiction may, of course, choose other approaches to implementing density bonus law.

Although the Statute requires the implementation of certain uniform development standards and incentives, considerable discretion is afforded for local administration of density bonus ordinances. Reflecting this flexibility, the model ordinance outlines the basic types of development incentives that can be provided in accordance with the Statute (Sections 3, 4, and 5), recommends provisions for the review of density bonus applications (Section 6), and for the terms of development agreements (Section 7). The model ordinance also includes provisions that the Department believes will best promote the purposes of the law and facilitate the development of housing for lower-income households.

Local agencies which wish to receive a copy of the model ordinance on computer disk may send a written request to the Department along with an IBM compatible 3.5" or 5" floppy disk.

If you have any questions concerning the model ordinance or the requirements of State density bonus law, please contact Linda Wheaton or Gary Collord, of our staff, at (916) 323-3176

Chapter _____

RESIDENTIAL DENSITY BONUS ORDINANCE

Sections:

- 1 Purpose and Intent**
- 2 Definitions**
- 3 Implementation**
- 4 Development Standards**
- 5 Development Incentives**
- 6 Application Requirements and Review**
- 7 Density Bonus Housing Agreement**

Section 1. Purpose and Intent.

This Density Bonus Ordinance is intended to provide incentives for the production of housing for very low, lower income, or senior households in accordance with Sections 65915 and 65917 of the California Government Code. In enacting this Chapter, it is the intent of the City/County of _____ to facilitate the development of affordable housing and to implement the goals, objectives, and policies of the City/County's Housing Element.

The regulations and procedures set forth in this Chapter shall be publicized by the City/County and shall apply throughout the City/County. Sections of the California Government Code referenced in this Chapter and application forms for complying with this Chapter, shall be available to the public.

Section 2. Definitions.

Whenever the following terms are used in this Chapter, they shall have the meaning established by this section:

"Additional Incentives" means such regulatory concessions as specified in California Government Code Subsections 65915 (d) and (h) to include, but not be limited to, the reduction of site development standards or zoning code requirements, direct financial assistance, approval of mixed-use zoning in conjunction with the Housing Development, or any other regulatory incentive which would result in identifiable cost avoidance or reductions that are offered in addition to a Density Bonus. See Section 5 of this Chapter.

"Affordable Rent" means monthly housing expenses, including a reasonable allowance for utilities, for rental Target Units reserved for Very Low or Lower Income Households, not exceeding the following calculations:

- (1) Very Low Income: 50 percent of the area median income for _____ County, adjusted for household size, multiplied by 30 percent and divided by 12.
- (2) Lower Income: 60 percent of the area median income for _____ County, adjusted for household size, multiplied by 30 percent and divided by 12.

"Affordable Sales Price" means a sales price at which Lower or Very Low Income Households can qualify for the purchase of Target Units, calculated on the basis of underwriting standards of mortgage financing available for the development.

"Density Bonus" means a minimum density increase of at least 25 percent over the otherwise Maximum Residential Density.

"Density Bonus Housing Agreement" means a legally binding agreement between a developer and the City/County to ensure that the requirements of this Chapter are satisfied. The agreement, among other things, shall establish: the number of Target Units, their size, location, terms and conditions of affordability, and production schedule. See Section 7 of this Chapter.

"Density Bonus Units" means those residential units granted pursuant to the provisions of this Chapter which exceed the otherwise Maximum Residential Density for the development site.

"Equivalent Financial Incentive" means a monetary contribution, based upon a land cost per dwelling unit value, equal to one of the following:

- (1) A Density Bonus and an Additional Incentive(s); or
- (2) A Density Bonus, where an Additional Incentive(s) is not requested or is determined to be unnecessary. See Section 4 of this Chapter.

"Housing Cost" means the sum of actual or projected monthly payments for all of the following associated with for-sale Target Units: principal and interest on a mortgage loan, including any loan insurance fees, property taxes and assessments, fire and casualty insurance, property maintenance and repairs, homeowner association fees, and a reasonable allowance for utilities.

"Housing Development" means construction projects consisting of five or more residential units, including single family, multifamily, and mobilehomes for sale or rent, pursuant to this Chapter.

"Lower Income Household" means households whose income does not exceed the lower income limits applicable to _____ County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code.

"Maximum Residential Density" means the maximum number of residential units permitted by the City/County's General Plan Land Use Element and Zoning Ordinance at the time of application, excluding the provisions of this Chapter. If the housing development is within a planned development overlay zone, the maximum residential density shall be determined on the basis of the general plan and the maximum density of the underlying zone.

"Non-Restricted Unit" means all units within a Housing Development excluding the Target Units.

"Qualifying Resident" means senior citizens or other persons eligible to reside in Senior Citizen Housing.

"Senior Citizen Housing" means a housing development consistent with the California Fair Employment and Housing Act (Government Code Section 12900 et. seq., including 12955.9 in particular), which has been "designed to meet the physical and social needs of senior citizens," and which otherwise qualifies as "housing for older persons" as that phrase is used in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations (24 CFR, part 100, subpart E), and as that phrase is used in California Civil Code Section 51.2 and 51.3.¹

"Target Unit" means a dwelling unit within a Housing Development which will be reserved for sale or rent to, and affordable to, Very Low or Lower Income Households, or Qualifying Residents.

"Very Low Income Household" means households whose income does not exceed the very low income limits applicable to _____ County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50105 of the California Health and Safety Code.

Section 3. Implementation.

The City/County shall grant either: a Density Bonus, or a Density Bonus with an Additional Incentive(s), or Equivalent Financial Incentives,² as set forth in Section 5 of this Chapter, to an applicant or developer of a Housing Development, who agrees to provide the following:

- (1) At least 20 percent of the total units of the Housing Development as Target Units affordable to Lower Income Households; or
- (2) At least 10 percent of the total units of the Housing Development as Target Units affordable to Very Low Income Households; or
- (3) Senior citizen housing.

In determining the minimum number of Density Bonus Units to be granted pursuant to this Section, the Maximum Residential Density for the site shall be multiplied by .25. When calculating the number of permitted Density Bonus Units, any fractions of units shall be rounded to the next larger integer.

In determining the number of Target Units to be provided pursuant to this Section, the Maximum Residential Density shall be multiplied by .10 where Very Low Income Households are targeted, or by .20 where Lower Income Households are targeted. The Density Bonus Units shall not be included when determining the total number of Target Units in the Housing Development. When calculating the required number of Target Units, any resulting decimal fraction shall be rounded to the next larger integer.

In cases where a density increase of less than 25 percent is requested, no reduction will be allowed in the number of Target Units required. In cases where a density increase of more than 25 percent is

requested, the requested density increase, if granted, shall be considered an Additional Incentive, as outlined in Section 5 of this Chapter.

In cases where the developer agrees to construct more than 20 percent of the total units for Lower Income Households, or more than 10 percent of the total units for Very Low Income Households, the developer is entitled to only one Density Bonus and an Additional Incentive(s) (or an Equivalent Financial Incentive) pursuant to Section 5 of this Chapter. Similarly, a developer who agrees to construct Senior Citizen Housing with 20 or 10 percent of the units reserved for Lower- or Very Low-Income Households, respectively, is only entitled to one Density Bonus and an Additional Incentive(s). The City/County may, however, grant multiple Additional Incentives to facilitate the inclusion of more Target Units than are required by this Chapter.

Section 4. Development Standards.

Target Units should be constructed concurrently with Non-Restricted Units unless both the City/County and the developer/applicant agree within the Density Bonus Housing Agreement to an alternative schedule for development.

Target Units shall remain restricted and affordable to the designated group for a period of 30 years (or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program), under the following circumstances:

- (1) Both a Density Bonus and an Additional Incentive(s) is granted; or
- (2) An Equivalent Financial Incentive equivalent to a Density Bonus and an Additional Incentive(s) is granted.

Target Units shall remain restricted and affordable to the designated group for a period of 10 years under the following circumstances:

- (1) Only a Density Bonus is granted and no Additional Incentives are granted; or
- (2) An Equivalent Financial Incentive equivalent to only a Density Bonus is granted.

In determining the maximum Affordable Rent or Affordable Sales Price of Target Units the following household and unit size assumptions shall be used,³ unless the Housing Development is subject to different assumptions imposed by other governmental regulations:

SRO (residential hotel) unit	75% of 1 person
0 bedroom (studio)	1 person
1 bedroom	2 person
2 bedroom	3 person
3 bedroom	4 person
4 bedroom	6 person

Target Units should be built on-site wherever possible and, when practical, be dispersed within the

Housing Development. Where feasible, the number of bedrooms of the Target Units should be equivalent to the bedroom mix of the non-Target units of the Housing Development; except that the Developer may include a higher proportion of Target Units with more bedrooms. The design and appearance of the Target Units shall be compatible with the design of the total Housing Development. Housing Developments shall comply with all applicable development standards, except those which may be modified as provided by this Chapter.

Circumstances may arise in which the public interest would be served by allowing some or all of the Target Units associated with one Housing Development to be produced and operated at an alternative development site. Where the developer and the City/County form such an agreement, the resulting linked developments shall be considered a single Housing Development for purposes of this Chapter. Under these circumstances, the developer shall be subject to the same requirements of this Chapter for the Target Units to be provided on the alternative site.

A Density Bonus Housing Agreement shall be made a condition of the discretionary planning permits (e.g., tract maps, parcel maps, site plans, planned development or conditional use permits, etc.) for all Housing Developments pursuant to this Chapter. The Agreement shall be recorded as a restriction on the parcel or parcels on which the Target Units will be constructed. The Agreement shall be consistent with Section 7 of this Chapter.

Section 5. Development Incentives.

The City/County shall provide a Density Bonus and an Additional Incentive(s), for qualified Housing Developments, upon the written request of a developer, unless the City/County makes a written finding that the Additional Incentive(s) is not necessary to make the Housing Development economically feasible and to accommodate a Density Bonus.

The development incentives granted shall contribute significantly to the economic feasibility of providing the Target Units. Applicants seeking a waiver or modification of development or zoning standards shall show that such waivers or modifications are necessary to make the Housing Development economically feasible in accordance with Government Code Section 65915(e). This requirement may be satisfied by reference to applicable sections of the City/County's general plan housing element.⁴

The need for incentives will vary for different Housing Developments. Therefore, the allocation of Additional Incentives shall be determined on a case-by-case basis. The Additional Incentives may include, but are not limited to, any of the following:⁵

- (1) A reduction of site development standards or a modification of zoning code or architectural design requirements which exceed the minimum building standards provided in Part 2.5 (commencing with Section 18901) of Division 13 of the California Health and Safety Code. These may include, but are not limited to, one or more of the following:⁶
 - (a) Reduced minimum lot sizes and/or dimensions.
 - (b) Reduced minimum lot setbacks.
 - (c) Reduced minimum outdoor and/or private outdoor living area.
 - (d) Increased maximum lot coverage.
 - (e) Increased maximum building height and/or stories.

- (f) Reduced on site parking standards, including the number or size of spaces and garage requirements.
 - (g) Reduced minimum building separation requirements.
 - (h) Reduced street standards, e.g., reduced minimum street widths.
 - (i) Other: _____
- (2) Allow the Housing Development to include non-residential uses and/or allow the Housing Development within a non-residential zone.
 - (3) Other regulatory incentives or concessions proposed by the developer or the City/County which result in identifiable cost reductions or avoidance.
 - (4) A Density Bonus of more than 25 percent.
 - (5) Waived, reduced, or deferred planning, plan check, construction permit, and/or development impact fees (e.g., capital facilities, park, or traffic fees).⁷
 - (6) Direct financial aid (e.g., redevelopment set-aside, Community Development Block Grant funding) in the form of a loan or a grant to subsidize or provide low interest financing for on or off site improvements, land or construction costs.

The City/County may offer an Equivalent Financial Incentive in lieu of granting a Density Bonus and an Additional Incentive(s). The value of the Equivalent Financial Incentive shall equal at least the land cost per dwelling unit savings that would result from a Density Bonus and must contribute significantly to the economic feasibility of providing the Target Units pursuant to this Chapter.

Section 6. Application Requirements and Review.

An application pursuant to this Chapter shall be processed concurrently with any other application(s) required for the Housing Development. Final approval or disapproval of an application (with right of appeal to the City Council/Board of Supervisors) shall be made by the planning commission unless direct financial assistance is requested. If direct financial assistance is requested, the planning commission shall make a recommendation to the City Council/Board of Supervisors who will have the authority to make the final decision on the application.⁸

An applicant/developer proposing a Housing Development pursuant to this Chapter, may submit a preliminary application prior to the submittal of any formal request for approval of a Housing Development. Applicants are encouraged to schedule a pre-application conference with the Planning Director or designated staff to discuss and identify potential application issues, including prospective Additional Incentives pursuant to Section 5 of this Chapter. No charge will be required for the pre-application conference. A preliminary application shall include the following information:

- (1) A brief description of the proposed Housing Development, including the total number of units, Target Units, and Density Bonus Units proposed.
- (2) The zoning and general plan designations and assessors parcel number(s) of the project site.

- (3) A vicinity map and preliminary site plan, drawn to scale, including building footprints, driveway and parking layout.
- (4) If an Additional Incentive(s) is requested, the application should describe why the Additional Incentive(s) is necessary to provide the Target Units, in accordance with Section 5 of this Chapter.

Within ____ days (maximum of 90 days)⁹ of receipt of the preliminary application the City/County shall provide to an applicant/developer, a letter which identifies project issues of concern, (the maximum financial assistance that the Planning Director can support when making a recommendation to the City Council/Board of Supervisors), and the procedures for compliance with this Chapter.

The Planning Director shall inform the applicant/developer that the requested Additional Incentives shall be recommended for consideration with the proposed Housing Development, or that alternative or modified Additional Incentives pursuant to Section 5 shall be recommended for consideration in lieu of the requested Incentives. If alternative or modified Incentives are recommended by the Planning Director, the recommendation shall establish how the alternative or modified Incentives can be expected to have an equivalent affordability effect as the requested Incentives.

Section 7. Density Bonus Housing Agreement.

Applicants/Developers requesting a Density Bonus, shall (draft and) agree to enter into a Density Bonus Housing Agreement with the City/County.¹⁰ The terms of the draft agreement shall be reviewed and revised as appropriate by the Planning Director, who shall formulate a recommendation to the planning commission for final approval.

Following execution of the agreement by all parties, the completed Density Bonus Housing Agreement, or memorandum thereof, shall be recorded and the conditions therefrom filed and recorded on the parcel or parcels designated for the construction of Target Units. The approval and recordation shall take place prior to final map approval, or, where a map is not being processed, prior to issuance of building permits for such parcels or units. The Density Bonus Housing Agreement shall be binding to all future owners and successors in interest.

The Density Bonus Housing Agreement shall include at least the following:

- (1) The total number of units approved for the Housing Development, including the number of Target Units.
- (2) A description of the household income group to be accommodated by the Housing Development, as outlined in Section 3 of this Chapter, and the standards for determining the corresponding Affordable Rent or Affordable Sales Price and Housing Cost.
- (3) The location, unit sizes (square feet), and number of bedrooms of Target Units.
- (4) Tenure of use restrictions for Target Units of at least 10 or 30 years, in accordance with Section 4 of this Chapter.

- (5) A schedule for completion and occupancy of Target Units.
 - (6) A description of the Additional Incentive(s) or Equivalent Financial Incentives being provided by the City/County.
 - (7) A description of remedies for breach of the agreement by either party (the City/County may identify tenants or qualified purchasers as third party beneficiaries under the agreement).
 - (8) Other provisions to ensure implementation and compliance with this Chapter.
- A. In the case of for-sale Housing Developments, the Density Bonus Housing Agreement shall provide for the following conditions governing the initial sale and use of Target Units during the applicable use restriction period:
- (1) Target Units shall, upon initial sale, be sold to eligible Very Low or Lower Income Households at an Affordable Sales Price and Housing Cost, or to Qualified Residents (i.e., maintained as Senior citizen housing) as defined by this Chapter.
 - (2) Target Units shall be initially owner-occupied by eligible Very Low or Lower Income Households, or by Qualified Residents in the case of Senior citizen housing.
 - (3) The initial purchaser of each Target Unit shall execute an instrument or agreement approved by the City/County restricting the sale of the Target Unit in accordance with this ordinance during the applicable use restriction period. Such instrument or agreement shall be recorded against the parcel containing the Target Unit and shall contain such provisions as the City/County may require to ensure continued compliance with this ordinance and the state Density Bonus Law.¹¹
- B. In the case of rental Housing Developments, the Density Bonus Housing Agreement shall provide for the following conditions governing the use of Target Units during the use restriction period:
- (1) The rules and procedures for qualifying tenants, establishing Affordable Rent, filling vacancies, and maintaining Target Units for qualified tenants;
 - (2) Provisions requiring owners to verify tenant incomes and maintain books and records to demonstrate compliance with this Chapter.
 - (3) Provisions requiring owners to submit an annual report to the City/County, which includes the name, address, and income of each person occupying Target Units, and which identifies the bedroom size and monthly rent or cost of each Target Unit.

TECHNICAL APPENDIX
[TO REMOVE ENDNOTES, DELETE NUMBERS FROM TEXT]

1. The definition of senior citizen housing in California law has been affected by recent amendments to state fair housing laws, including the Fair Employment and Housing Act, the Unruh Civil Rights Act, and the Mobile Home Residency Act. The definition of Senior Citizen Housing in a local ordinance should consider more restrictive provisions of either state or federal law relating to familial status and qualifying as "housing for older persons."

Notwithstanding Government Code Section 65915, pursuant to federal and state law, including Sections 12955, 12955.9, and 65008(b) of the Government Code, local governments are prohibited from administering ordinances which discriminate against residential development on the basis of age or familial status, unless subject to a statutory exemption. The only authorized exemption from discrimination on the basis of familial status is for housing which meets the federal and state statutory definition as "housing for older persons." Thus, housing for senior citizens pursuant to Section 65915 must comply with this criteria as defined by a combination of federal and state statutes and regulations.

The Housing for Older Persons Act of 1995 (Public Law 104-76), signed 12/28/95) amended Section 807(b) regarding qualifying criteria for housing intended and operated for occupancy by persons 55 years of age and older. Implementing regulations for the revised provision (for 24 CFR part 100, subpart E) were amended by 61 FR 18249, Apr. 25, 1996.

California Government Code Section 12955.9(c) places the burden of proof upon an applicant to show that a development qualifies as housing for older persons. The California Department of Fair Employment and Housing (Government Code Section 12955.9 et. seq.) has been delegated additional enforcement authority on this issue since California's fair housing act was found by HUD to be substantially equivalent with the Federal Fair Housing Amendments Act of 1988 (P.L. 100-430).

2. The local government has discretion to decide whether to offer equivalent financial incentives in lieu of a density bonus and an additional incentive(s). If equivalent financial incentives will not be offered or considered, then references to this option should not be included in the ordinance.
3. The proposed standards are an example; alternative standards may be used in the ordinance, or standards need not actually be included in the ordinance.
4. If the local government's housing element (or other planning documents) indicates that the development of housing affordable to lower-income households is generally not feasible within the community without financial or development incentives, such information and source may be referenced to satisfy the requirements of Government Code Section 65915 (e).

5. The incentives offered should be those that will provide the most meaningful development incentives for housing developers in the local housing market. The relevance of particular incentives may vary by community.
6. Incentives should be provided which, individually or in combination, will accommodate a density increase of at least 25 percent.
7. Deferrals for the payment of development impact fees otherwise required by Government Code Section 66007 do not qualify as an incentive for purposes of this ordinance.
8. Note that the decisions of the city/county approving or disapproving the proposed development may be subject to the provisions of Government Code section 65589.5 which requires certain findings where the city/county proposes to: 1) disapprove, or approve on conditions rendering the development infeasible, a proposed affordable housing development, or 2) disapprove, or approve at a lesser density, a housing development proposal which complies with the applicable general plan, zoning, and development policies in effect at the time the project's application is deemed complete.
9. While the statute allows a maximum of 90 days for the review of a preliminary application, shorter review periods are encouraged where possible.
10. The local government may prepare and provide developers with a standard housing development agreement format for purposes of this ordinance. If a state or federal government subsidy is used to finance the housing development, certain documentation procedures or monitoring provisions may be specified by the government program, provided they are consistent with the provisions of Section 65915. Where there is no state or federal government subsidy program involved, but whereby the local government proposes conditions other than those proposed here, use of standard conditions, e.g., those of prevailing federal housing subsidy programs, are encouraged to accommodate standardization objectives of development financing and refinancing.
11. Localities have the responsibility, and the flexibility, to create and implement a workable mechanism to "ensure the continued affordability" of the for-sale target units as required by the statute. Deed restrictions, conditions governing resale and forgivable second mortgages are methods that have been utilized in similar situations. The recorded instrument or document should be drafted to be compatible with the proposed sources of financing for the purchase of the target unit by the owner/occupant.